IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	ID#: 0804024505
	)	
CHRISTOPHER WEHDE,	)	
	)	
Defendant.	)	

ORDER

Upon Defendant's Post-plea Motions – DENIED

1. On January 21, 2009, Defendant pleaded guilty to Rape Fourth Degree, Sexual Solicitation of a Child, and Conspiracy Second Degree. During the extensive plea colloquy, Defendant agreed that he orchestrated sex acts between his underage son and the child's stepmother, Defendant's wife. Defendant assured the court, twice, that he was pleading guilty to all three crimes because he was "in fact, guilty of them." He also assured the court, orally and in writing, that no one had threatened him or forced him to plead guilty.

2. Defendant's assurances were easy to believe. His wife pleaded guilty and she is awaiting sentencing. Thus, it seemed likely that she and Defendant's

son were available to testify against him. Moreover, according to the affidavit of probable cause, Defendant confessed explicitly to participating in "multiple" sex parties involving him, his wife and his underage son. The record available to the court when it considered Defendant's guilty plea supported the firm belief that a trial would have been sordid and it would have ended badly for Defendant.

3. By pleading guilty to the three charges, Defendant staved-off the imminent trial of the indictment charging him with 11 felonies. Not only that, in exchange for his plea, the State agreed to cap its sentencing recommendation at 15 years. Considering that he may be eligible for sentencing as a habitual offender under 11 *Del. C.* § 4214(a), had Defendant been convicted at trial the State would have been free to insist on his being sentenced as a habitual offender on every count. And, had it come to that, the best Defendant could have hoped for would have been a *defacto* life sentence. Even if Defendant's predicate convictions overlap and he is not a habitual offender, he still would have faced several, long, mandatory sentences. In other words, as tough as the plea was, it probably spares Defendant from certain death in prison.

4. Defendant was indicted on June 23, 2008. He was arraigned on July 8, 2008 and a Public Defender entered his appearance. Three weeks later, Defendant filed a *pro-se* motion to dismiss counsel. As it happened, due to a conflict between

Defendant and his wife's representation, another attorney, Edward Pankowski, Esquire, was appointed on August 21, 2008.

5. Mr. Pankowski was also not to Defendant's liking from the start. After Pankowski's appointment, Defendant's complaints and motions, including motions to dismiss Mr. Pankowski, became a torrent. The court referred Defendant's papers to Mr. Pankowski. That precipitated back-and-forth between the court and Mr. Pankowski concerning Defendant's dissatisfaction.

6. In light of the above, when Defendant pleaded guilty, the court was especially concerned about Defendant's feelings toward Mr. Pankowski. On his Truth-In-Sentencing form that was filled-out days before the plea was entered, Defendant indicated that he was not satisfied with his lawyer's representation. And so, during the plea colloquy, the court addressed Defendant directly about his then-current feelings toward Mr. Pankowski.

7. Specifically, the court asked Defendant: "And are you satisfied with the work that Mr. Pankowski has performed for you as your lawyer?" Defendant responded: "Yes, Your Honor." The court followed-up by asking: "Mr. Wehde, as you know, there's been on-again-off-again [dis]satisfaction with Mr. Pankowski as your lawyer. There have been times where you've expressed dissatisfaction with him. But at this point you are of the belief that he's done what he can do for you and

you are satisfied with his work, is that right?" Defendant responded: "Yes." The court pursued it further: "And you understand once this plea is accepted, you will not be able to come to back later with complaints about Mr. Pankowski?" Defendant responded: "Yes, Your Honor." Earlier in the colloquy, Defendant also acknowledged the court's warning, "that from the moment this plea is accepted [], it will be almost impossible for you to back out of it [.]"

8. When Defendant assured the court that he was satisfied with Mr. Pankowski's work, Mr. Pankowski advised: "Your Honor, that's been helped by the fact that we've met four times since January 5th on this case and things have fallen into place." The court turned back to Defendant: "Very well, and are you satisfied Mr. Wehde, that entering this plea today is a knowing, voluntary, and intelligent thing on your part?" Defendant responded, "Yes, Your Honor." And, finally, the court inquired: "Mr. Wehde do you have any questions, you'd like to ask the court before it considers your plea?" Defendant responded: "No, Your Honor."

9. Taking everything into account, including Defendant's prior complaints, the affidavit of probable cause, the co-defendant's guilty plea, Defendant's criminal history, the plea offer, and (most importantly) the plea colloquy, the court found, and it continues to find, that Defendant's plea was knowing voluntary and intelligent.

10. Alas, despite the court's direct, repeated warnings that Defendant would not be able to come back and complain about Mr. Pankowski or back out of the plea, and despite Defendant's acknowledgment of the warnings, almost immediately after Defendant's plea was accepted and he left the courthouse, Defendant started complaining, again, about the plea and Mr. Pankowski. It is as if Defendant and the court never spoke directly about Defendant's guilt, his rights and his feelings about Mr. Pankowski..

11. So far, since his plea, Defendant has filed at least 15 letters and four motions, including two motions to withdraw his guilty plea, a "motion to dismiss the indictment," and a "motion to compel." Collectively, the letters and motions speak more to Defendant's mood disorder and panic over his impending sentencing and less about his actual entitlement to relief. For example, Defendant's motion to dismiss is based, inappropriately, on alleged ineffectiveness of counsel. (Dismissal of the indictment is not the remedy for ineffective counsel.) Attached to the motion is Defendant's "self made plea-agreement," implying that Defendant would plead guilty to conspiracy and endangering the welfare of a child, for which Defendant expects, unrealistically, to be sentenced to time-served, followed by two years of probation. Basically, Defendant is terrified by the thought of sentencing as a habitual offender.

12. Defendant has not presented evidence showing that he is entitled to withdraw his guilty plea and stand trial, much less to have the indictment dismissed. Defendant's most recent claims of innocence are belied by his in-court and out-of-court confessions. By the same token, Defendant's new claim that the reason that he told the court that no promises were made was because Mr. Pankowski told him to say that, collides with his claim that he does not trust Mr. Pankowski, and so on. Some of Defendant's claims simply do not make sense. For example, Defendant's claim that he could not "perform" because he had a vasectomy is largely beside the point, considering that, as the court explained to Defendant during the plea colloquy, he was charged as an accomplice to his wife.

For the forgoing reasons, all of Defendant's post-plea motions, including his motions to withdraw his guilty plea, are **DENIED.**

IT IS SO ORDERED.

Date: March 11, 2009 /s/ Fred S. Silverman
Judge

oc: Prothonotary, Criminal Div.
pc: Renee L. Hrivnak, Deputy Attorney General
Edward Pankowski, Esquire
Christopher Wehde